

Annual Bulletin.

No. 2.

JULY 1, 1909.

Comparative Law Bureau of the American Bar Association

Organized August 28, 1907.

Officers and Managers

Director—SIMEON E. BALDWIN, New Haven, Conn.

Secretary—WILLIAM W. SMITHERS, Philadelphia, Pa.

Treasurer—EUGENE C. MASSIE, Richmond, Va.

JAMES BARR AMES, Cambridge, Mass.

ANDREW A. BRUCE, Grand Forks, N. D.

EDGAR H. FARRAR, New Orleans, La.

EDWIN A. JAGGARD, St. Paul, Minn.

GEORGE W. KIRCHWEY, N. Y. City.

WM. DRAPER LEWIS, Philadelphia, Pa.

CHAS. E. LITTLEFIELD, Rockland, Me.

CLIFFORD S. WALTON, Washington, D. C.

JOHN H. WIGMORE, Chicago, Ill.

Headquarters:

**Secretary's Office, 1100 Land Title Building
Philadelphia, Pa., U. S. A.**

Single copies of this Bulletin are supplied without charge to all members of the Bureau and extra copies at fifty cents each. Non-members can secure single copies at one dollar each. All communications and books for review should be sent to the Secretary.

and the assignment of the members of the various senates, arrangement of substitutes, etc., are determined by the *Praesidium*, composed of the president of the court, the presidents of the senates and the four oldest justices. The proceedings of the court are conducted in conformity with the "order of business" drawn up by the full court and ratified by the *Bundesrat*.

In civil suits the Civil Senates of the court are competent to hear and decide the complaints against the decisions of the *Oberlandesgericht*. They may also revise final judgments of that court, rendered as a court of second instance, but it must be shown that such a decision is based upon an infraction of an Imperial law, or a law whose operation extends beyond the jurisdiction of the court from whose decision the appeal is made. Certain other questions touching the subordinate courts, may be passed upon by this Civil Senate. The Criminal Senates of this court are competent to hear, as courts of first and last instance, cases of high treason, and treason against a state, so far as these crimes are directed against the Kaiser or the Empire, as well as cases of betrayal of military secrets; to revise judgments of the Criminal Chambers sitting as courts of first instance, so far as the revision is based exclusively upon the infraction of a state law. This court may also revise the judgment of the jury courts. The consular courts in both civil and criminal matters are subject to this court's jurisdiction.

Judges are selected from among the attorneys only after a very severe course of training, which includes a preliminary examination upon the studies at a university, and then a second examination after a period of four years spent in the service of the courts and with an attorney or a state's attorney. The work during this second period of four years is required by law to be so distributed that the student shall gain an insight into the operation of all branches of judicial activity, and such a practical facility therein as may be requisite for the independent and efficient administration of the judicial office.

R. P. S.

JURISPRUDENCE—

ASSIGNMENT OF A DEBT:

The effect of the assignment of a debt with respect to the debtor (*e. g.* as to the necessity of notice) is governed by the law determining the debtor's contract in general. 65 R. G., 357 (March 19, 1907); R. G., June 2, 1908, (18 Böhm's Zeitschrift 449).

CONTRACTS:

An attempt should be made even in bilateral contracts to discover a single law which, in accordance with the presumed intention of the parties, is to determine their mutual rights and obligations. 68 R. G., 203 (April 4, 1908).

This case indicates an abandonment of an established rule heretofore followed by the Imperial Court in accordance with which in bilateral contracts each party was deemed, in case of doubt, to have contracted with reference to his own law. See 34 R. G. 191; 46 R. G. 193; 51 R. G. 218; R. G. January 21, 1908 (37 Juristische Wochenschrift 192).

Before the adoption of the Civil Code, in 1900, German courts uniformly applied the *lex solutionis* for the purpose of determining the validity and the obligation of contracts. The second Senate of the Imperial Court has adhered to this view since that time. See 55 R. G. 106. The sixth Senate, on the other hand, has held that the adoption of the Civil Code has impliedly authorized the German courts to examine the question anew and that in the light of the arguments advanced by v. Bar in his work on Private International Law the preferable rule would be the *lex domicilii* of the debtor. See 61 R. G. 343; 63 R. G. 379.

DIVORCE:

A German became a British subject in June, 1893. In August of that year he was married in Germany to B, a German subject. The parties lived in London until 1903 when they returned to Germany. In 1905 the wife instituted a suit for divorce. The husband denied the jurisdiction of the German courts on the ground that being a British subject, the English courts would have exclusive jurisdiction.

The Imperial Court held that under Sec. 606, par. 4 of the German Code of Civil Procedure, German courts have jurisdiction to grant a divorce to foreigners if they are recognized to be competent also by the law of the country of which the husband is a subject. English law recognizing the competency of the *forum domicilii* with respect to divorce proceedings, the German courts would have jurisdiction. R. G. Jan. 7, 1907 (Juristische Wochenschrift 1907, p. 127).

GUARDIANSHIP:

A citizen of the United States died in Dresden in 1904 leaving a widow and two minor children. The widow contracted to sell the

dwelling-house belonging to her husband's estate in Germany. Believing that a ratification of this contract by the children was necessary she applied for the appointment of a guardian. Her petition was denied on the ground that under German law the mother's parental power over her children enabled her to bind them without the intervention of a guardian, approval of the contract by the guardianship court being sufficient. Upon appeal it was held that German law did not apply exclusively, for the status of a person was governed by his nativial law (Arts. 7-31, Law of Introduction, Civil Code); hence also the question whether a person is in need of a guardian. German courts would have jurisdiction under Art. 23, Law of Introduction of the Civil Code, since the powers of an American guardian do not extend to property in another jurisdiction. O. L. G. Jena, May 8, 1907 (18 Böhm's Zeitschrift 180).

K. G., Oct. 15, 1908 (19 Böhm's Zeitschrift 226) held that a German court of guardianship is incompetent to grant preliminary measures whereby the personal relation between divorced parents of a foreign nationality and their children is to be regulated. Art. 23, par. 3, Law of Introduction, Civil Code.

HUSBAND AND WIFE:

A Portuguese subject was married to plaintiff, the daughter of German parents, and lived with her in Germany, where he established his domicil. The parties separated later, whereupon the wife sued the husband for support. The husband maintained that the wife being the guilty party his liability should be limited to the bare necessities.

The Imperial Court held that all matters respecting the personal relations between husband and wife, including that of support, were subject to their national law (Art. 14, Law of Introduction, Civil Code). In the event that Portuguese law should refer this matter to the *lex domicilii* of the parties, German law would govern by way of *renvoi*. 62 R. G. 400 (Feb. 15, 1906).

INHERITANCE:

K, an Austrian, died in Germany in 1902 where she left real and personal property. K was the illegitimate daughter of X. X married Y, an Austrian, by whom she had five children. Z was a daughter of X's brother and German by nationality. X's children claimed the whole estate.

The lower court held with regard to German realty that Art.

25, Law of Introduction, Civil Code, made the national law of the deceased applicable, but inasmuch as under Austrian law succession to realty was governed by the *lex rei sitae* German law would govern under the *renvoi* doctrine. (See Art. 27, Law of Introduction, Civil Code). With respect to the personalty it applied Austrian law under which only the mother of an illegitimate child possesses the right of inheritance with respect to such child and rejected, therefore, both the claims of X's children and of Z. Although the court found that under Austrian law the succession to the property of a German domiciled in Austria would upon his death not be governed exclusively by German law it declined to apply Art. 25, sentence 2, Law of Introduction, Civil Code, in favor of Z. In this regard the Imperial Court reached a contrary conclusion. It held that while X's children, as foreigners, would have no rights by virtue of this article if they possessed none under their national law an exception was made by Art. 25 in favor of Germans. Z, therefore, was held to be entitled to the personal estate.

PARENT AND CHILD:

An Austrian Catholic was married to a German Protestant and lived with her in Germany. After the father's death a dispute arose with respect to the religious education of the children.

The religious education of the children being deemed a part of the parental power, it was held to be subject to the national law of their father. (Art. 19, Law of Introduction, Civil Code), K. G. Jan. 18, 1906, (16 Böhmer's Zeitschrift 304).

REAL PROPERTY:

In 63 R. G. 18 (March 3, 1906), the question arose whether Sec. 313, par. 1 of the German Civil Code was applicable to a contract of sale relating to foreign real estate. The lower courts answered the question in the affirmative, the Imperial Court in the negative, holding that the law of the *situs* should govern matters of form. The Imperial Court said in part: "It is true the rule that in contracts relating to foreign realty requisites of form are governed by the law of the place where the real property is situated is not laid down expressly anywhere, for par. 2 of Art. 11 of the Law of Introduction to the Civil Code refers only to the form of transactions affecting title (*dingliches Rechtsgeschäft*) and in conjunction with par. 1, sentence 2, of such article says nothing more than that transactions affecting title, wherever entered into, must conform always to the law

governing the transaction itself; but it is not said what those laws are. At the same time the answer may be found in Art. 1, sentence 1, of Art. 11. Its tenor in general leaves no doubt but that with respect to transactions relating to real property the laws of the *situs* shall control and that therefore these laws are to be applied without distinguishing between real and personal transactions—consequently also with respect to the question whether and to what extent the validity of obligatory contracts of sale is dependent upon provisions relating to form. This appears the more justifiable because of the fact that our former law took the same view (compare as to Prussian law, Sec. 115 A. L. R. I, 5, as to the common law, Dernburg, Pandekten, Vol. I, Sec. 47, Windscheid, Pandektenrecht, Vol. I, Sec. 35), and it is not apparent that in the codification of this branch of the law it was the intent to depart from these principles."

[For a comment upon this case see 16 Böhm's Zeitschrift at p. 331.]

SECURITY FOR COSTS:

According to Sec. 110, Code of Civil Procedure, security for costs must be given by a plaintiff who is a foreigner unless under the law of the state to which plaintiff belongs by nationality a German would be exempted from the necessity of giving security in a like case. *Held*: A citizen of the United States, domiciled in New York, would not be exempt for the reason that under the law of New York, a German, not domiciled within the state, would be obliged upon defendant's request to give security in a suit against a resident of the state. The fact that the New York law does not distinguish between citizens and foreigners is immaterial.

TORTS:

A collision between German vessels whose owners reside in Germany is governed by German law although it occurred in the territorial waters of a foreign nation. Sup. Hans. Court, Nov. 12, 1906, (22 Rev. Int. de Droit Maritime 666). Compare R. G. May 30, 1888 (44 Seuffert's Archiv. 133; R. G. Dec. 11, 1901 (12 Böhm's Zeitschrift 121).

E. G. L.

BIBLIOGRAPHY—

The year 1908 witnessed the appearance of a great number of important new works, while many leading publications went through